BLEED THROUGH

OPINION OF U.S. DISTRICT COURT

In the United States District Court for the
Eastern District of Missouri
Eastern Division

Mid-America Transportation Company, Inc.,
Plaintiff,
vs.
National Marine Service, Inc., and M/V National Progress, Her Engines, Boilers, etc.,
Defendant.
No. 71 A 692 (3).

ORDER

(Filed in U.S. District Court March 5, 1975)

In accordance with the Memorandum of this Court filed this date and incorporated herein,

It Is Hereby Ordered that defendant, National Marine Service, Inc., and M/V National Progress, her engines, boilers, etc., have judgment against the plaintiff, Mid-America Transportation Company, Inc.; and

It Is Further Ordered that plaintiff, Mid-America Transportation Company, Inc., pay costs.

Dated this 5th day of March, 1975.

/s/ H. KENNETH WANGELIN
United States District Judge

JUDGMENT OF U.S. DISTRICT COURT

MEMORANDUM

(Filed in U.S. District Court March 5, 1975)

This matter is before the Court for an additional hearing as mandated by the United States Court of Appeals for the Eighth Circuit. 497 F.2d 776 (8th Cir., 1974).

This action was brought pursuant to the admiralty and maritime jurisdiction of this Court to recover damage to a barge and its cargo sustained while in tow of the defendant's tug. This Court entered judgment for the defendants. 356 F.Supp. 1358 (E.D. Mo., 1973). On appeal, the Eighth Circuit Court of Appeals Ordered that there should be further proceedings at which the tug (the defendant) should be given an opportunity (subject to rebuttal by the barge (the plaintiff)) to carry the burden of discharging the inference of liability. The Court being fully apprised of the premises hereby makes the following findings of fact and conclusions of law.

Findings of Fact

1. The defendants produced sufficient evidence to establish that the M/V National Progress and its tow were in channel and did not hit a known obstruction while within the channel.

2. The defendants have come forward with evidence sufficient to cast doubt upon the validity of an inference of the tug's negligence. No evidence was introduced by plaintiff that was sufficient to rebut the defendants' proof that the M/V National Progress and its tow were within the channel and did not hit a known obstruction in the channel.

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3. The barge, MAT-75 (plaintiff) has not sustained the burden of ultimate persuasion resting upon it from the start of this action and, therefore, cannot prevail.

Conclusions of Law

The facts and evidence adduced at the hearing which this Court held lead to one inescapable conclusion, namely, that the defendant has rebutted the prima facie case against it and that the plaintiff has failed to carry the burden of ultimate persuasion resting upon it. *Bisso v. Waterways Transportation Co.*, 235 F.2d 741 (5th Cir., 1956). The evidence conclusively shows that the M/V National Progress and its tow were in the channel at all times and did not hit a known obstruction within the channel. According to the Mandate of the Eighth Circuit Court of Appeals, cited above, there can be no other finding other than that for the defendant.

Dated this 5th day of March, 1975.

/s/ H. KENNETH WANGELIN
United States District Judge